UNITED STATES DISTRICT COURT
DISTRICT OF RHODE ISLAND

UNIVERSITY EMERGENCY
MEDICINE FOUNDATION

v. C.A. No. 97-549-T

RAPIER INVESTMENTS, LTD.
and MEDICAL BUSINESS
SYSTEMS, INC.

MEMORANDUM AND ORDER

ERNEST C. TORRES, United States District Judge.

University Emergency Medicine Foundation ("UEMF") brought this action for a declaratory judgment that it validly terminated a contract with Rapier Investments, Ltd. ("Rapier"); for replevin of property in Rapier's possession; and for damages allegedly caused by Rapier's wrongful retention of that property. The case is presently before the Court for consideration of the parties' cross-motions for summary judgment with respect to the declaratory judgment claim.

The issue presented is whether the notice of termination provided by UEMF satisfies the requirements of the contract. Because I answer that question in the affirmative, the plaintiff's motion is granted and the defendants' motion is denied.

Background

With apologies to William Shakespeare, the dispute regarding the validity of the purported termination by UEMF can be described as "much ado about nothing." It occupies the Court's time and

attention only because the defendants' preoccupation with hypertechicalites has converted what apparently is their pique at being spurned into a "federal case."

The facts material to these cross-motions are undisputed. UEMF provides emergency medicine services at several hospitals in Rhode Island. Medical Business Systems, Inc. ("MBS"), a subsidiary of Rapier, provides billing and accounts receivable services to health care entities.

On October 1, 1995 UEMF and Rapier entered into a written contract pursuant to which MBS was to provide its services to UEMF. The initial term of the contract was one year, but the contract stated that it would be renewed automatically for additional one-year terms unless either party gave written notice of its intent to terminate at least four months prior to the expiration date.

A different section of the contract contained the following provision dealing with notice:

> Any notices given pursuant to this Agreement shall be deemed to have been effectively given if sent by registered or certified mail to the party to whom the notice is directed at the address set forth for such party herein above or at such other address as such party may hereafter specify in a notice given in accordance with this paragraph.

The contract listed Rapier's address as 7 Wells Avenue, Newton, Massachusetts.

During the first year of the contract, neither party gave notice of termination and the contract automatically was renewed until September 30, 1997. On May 30, 1997, UEMF sent two letters stating that it did not intend to renew the contract for a third

year.

One letter was sent via certified mail addressed to JoAnn Barato-Mills, the individual who had negotiated the contract on behalf of Rapier, at 20 Altieri Way, Warwick, Rhode Island. It was received by her on June 2, 1997.

The second letter was sent via certified mail to Alan Carr-Locke of Rapier at 1238 Chestnut Street, Newton, Massachusetts. Since that street address was incorrect, the letter was returned as undelivered on June 10. UEMF promptly mailed the notice to 7 Wells Avenue in Newton and Rapier received it shortly thereafter.

UEMF later sought bids for the services it had been receiving from MBS. MBS submitted a bid, but when UEMF selected another provider, MBS asserted that UEMF's notice of non-renewal was invalid and that the contract between the parties was renewed automatically through September 1998.

UEMF seeks a declaratory judgment that it validly terminated the contract, or, in the alternative, that it is entitled to terminate the contract because the defendants breached it. The defendants have counterclaimed for breach of contract asserting that UEMF's purported notice of termination was ineffective. The parties' cross-motions for summary judgment address only the validity of the termination notice.

Discussion

The defendants argue that UEMF's notice of termination was ineffective because (1) it was not sent to the address set forth in the contract, and (2) it was untimely.

It is true that when a contract prescribes the manner in which notice of termination must be given, failure to follow that method may render the notice ineffective. 6 Arthur Linton Corbin, Corbin on Contracts § 1266, at 64 (1962); 1 Maurice H. Merrill, Merrill on Notice § 601, at 658-60 (1952). However, the contract at issue does not require that notice directed to Rapier be sent to 7 Wells Avenue. Rather, it permits notice to be sent to that address and deems notice so sent "to have been effectively given." Thus, it allows the party giving notice to establish that it has complied with the notice requirement by showing that it followed the method described in the contract. It does not purport to make that method the exclusive means by which notice can be given.

Even where a contract requires a particular method of giving notice, notice given by a different method is effective if it is actually received unless the method by which notice is given is an essential element of the transaction. 1 Merrill, supra, § 603, at 662-63. Thus, a notice of non-renewal that actually is received may be effective even though sent to an address other than the address specified in the contract. See U.S. Broad. Co. v. National Broad. Co., 439 F. Supp. 8, 10 (D. Mass. 1977) (applying New York law) ("Here it is clear that plaintiff and plaintiff's counsel timely received both notices and it would be 'hypertechnical in the extreme' to hold that notice actually received was ineffective." (quoting Ives v. Mars Metal Corp., 196 N.Y.S.2d 247, 249 (N.Y. Sup. Ct. 1960))); see also In re Scarsdale Tires Inc., 47 B.R. 478, 481 (Bankr. S.D.N.Y. 1985) (where lessee actually received notice of

termination of lease, notice was deemed effective even if it was not sent to address specified by lessee's predecessor-in-interest); Lloyd's Plan, Inc. v. Brown, 268 N.W.2d 192, 195 (Iowa 1978) (notice of defendant's right to cure default was effective even when sent to an address other than that designated in the contract where defendant actually received the notice and was not prejudiced by the sending of the notice to an undesignated address).

In this case, UEMF's letter to Barato-Mills at MBS satisfied the notice requirement. MBS was the entity providing the contract services and Barato-Mills was the person who negotiated the contract on behalf of Rapier. Consequently, Barato-Mills and MBS had at least implied or apparent authority to deal with UEMF regarding the performance of services pursuant to the contract and to accept notice of termination of those services. See Menard & Co. Masonry Bldg. Contractors v. Marshall Bldg. Sys., Inc., 539 A.2d 523, 526 (R.I. 1988); Calenda v. Allstate Ins. Co., 518 A.2d 624, 628 (R.I. 1986); Restatement (Second) of Agency § 27 (1958).

The defendants have the effrontery to assert that the notice is invalid because the contract required that it had to be given by May 31 and it was not received by MBS until June 2 or by Rapier until sometime after June 10. That argument ignores the fact that the notice provision clearly states that "[a]ny notices given pursuant to this Agreement shall be deemed to have been effectively given if sent by registered or certified mail to the party to whom the notice is directed . . . ." (emphasis added). See, e.g., Trust Co. of Chicago v. Shea, 122 N.E.2d 292, 293 (Ill. App. Ct.

1954) (where terms of contract specified that "mailing of . . . notice by registered mail shall constitute service thereof," the effective date of notice was the date it was mailed). Here, it appears that the notice must have been sent by May 31 in order to be received on June 2.

Even if the notice was not sent until June 1, Rapier has failed to indicate any way in which it was prejudiced by the one-day delay or even the ten-day delay in delivering the notice to Carr-Locke. By the defendants' own admission, the purpose of the four-month notification period was "to provide Rapier with sufficient time to make changes to MBS's operations, personnel, budget planning and management resources in the event UEMF terminated the Agreement." (Defs.' Rule 12.1 Statement ¶ 3.) There is absolutely no indication that such purpose was frustrated by providing Rapier with notice of 119 days or even 110 days instead of 120 days. See, e.g., Music, Inc. v. Henry B. Klein Co., 245 A.2d 650, 652 (Pa. Super. Ct. 1968) (finding no prejudice where notice of termination was received fifty-eight days before termination date instead of the required sixty days).

Conclusion

For all of the foregoing reasons, UEMF's motion for summary judgment declaring that it gave a valid notice of non-renewal is hereby granted and the defendants' cross-motion for summary judgment is denied.

IT IS SO ORDERED,

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Ernest C. Torres
United States District Judge
Date: October , 1998
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